Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Comment Sought on Spectrum for Broadband: NBP Public Notice #6	)	GN Docket No. 09-47
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act	)	GN Docket No. 09-137

COMMENTS OF XO COMMUNICATIONS, LLC – NBP PUBLIC NOTICE #6

XO Communications, LLC ("XO") hereby comments on the Federal Communications Commission's ("FCC's" or "Commission's") Public Notice #6 on the use of spectrum for delivering broadband.[1] In the *Public Notice*, the FCC addresses the potential shortage of spectrum for broadband, and asks how it can ensure that available spectrum is fully utilized. In response, XO urges the FCC (1) to promote use of the nation's existing, widely-deployed copper infrastructure in order to ease the demand for broadband spectrum, and (2) to adopt licensing procedures that encourage efficient spectrum use across all commercially allocated spectrum bands.

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[1] *Comment Sought on Spectrum for Broadband, NBP Public Notice # 6*, GN Docket Nos. 09-47, 09-51, 09-137, Public Notice, DA 09-2100 (rel. Sep. 23, 2009) ("*Public Notice*").

I. THE FCC SHOULD PROMOTE USE OF EXISTING COPPER PLANT FOR DELIVERY OF BROADBAND AND ADOPT LICENSING PROCEDURES THAT ENCOURAGE EFFICIENT SPECTRUM USE

In the *Public Notice*, the FCC presents numerous questions regarding the use of spectrum to deliver broadband services. In these comments, XO focuses on those questions that address a potential shortage of broadband-capable spectrum and the need for efficient use of spectrum.

1. What is the ability of current spectrum allocations to support next-generation build-outs and the anticipated surge in demand and throughput requirements?[2]

a. How should we think about the capacity of existing allocations and their ability to support growth in wireless broadband? Is there enough spectrum to support announced and future network deployments?[3]

The *Public Notice* echoes concerns raised by FCC Chairman Julius Genachowski in a recent speech on spectrum issues. Chairman Genachowski referred to a "looming spectrum crisis" resulting from the explosive growth of broadband,[4] and noted that while the FCC has authorized a threefold increase in commercial spectrum, "[t]he problem is many anticipate a 30-fold increase in wireless traffic."[5] In the Chairman's view, "one of the FCC's highest priorities is to close the spectrum gap."[6]

XO shares the Chairman's concerns and recognizes the harm that could result from this gap between available broadband-capable spectrum and the demand for broadband capacity. To the extent that media other than spectrum can absorb a greater

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[2] *Public Notice* at 4.

[3] *Id.* at 5.

[4] "America's Mobile Broadband Future," Prepared Remarks of Chairman Julius Genachowski, International CTIA Wireless I.T. & Entertainment, San Diego, CA, at 4 (Oct. 7, 2009), *available at*: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293891A1.pdf> ("*Genachowski Remarks*").

[5] *Id.* at 5.

[6] *Id.*

portion of the nation's rapidly growing demand for bandwidth and help alleviate any such gap, XO believes that the FCC should promote those alternative broadband solutions. In particular, the Commission should look to the nation's existing copper infrastructure as a means of relieving spectrum congestion and accelerating the delivery of high-bandwidth services around the country.

As XO and others have previously described, the nation's ubiquitous copper plant is the most widely deployed broadband infrastructure currently in use.[7] With the ongoing development and evolution of copper-based technologies, existing copper plant can now deliver substantially more bandwidth than it could just five years ago. In fact, with Ethernet-over-copper ("EoC") technology supporting data speeds up to 45 Mbps today and possibly greater than 100 Mbps in the future, copper now represents an attractive last-mile delivery mechanism for broadband. Full use of this existing infrastructure will provide an alternative broadband solution and thereby help reduce demand for broadband-capable spectrum throughout the United States. In rural and remote areas beyond the reach of fiber, EoC will give many customers their first practical wireline broadband alternative to wireless broadband and satellite broadband technologies, while in more populated areas EoC will provide customers with a wireline broadband option that is more cost-effective than fiber. Given the benefits of this technology, the FCC in its national broadband plan should identify copper as a critical nationwide delivery mechanism for broadband.

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[7] Comments of XO Communications, LLC, GN Docket No. 09-51, at 8-12 (June 8, 2009) ("XO Broadband NOI Comments"); Reply Comments of XO Communications, LLC, GN Docket No. 09-51, at 11-15 (July 21, 2009) ("XO Broadband NOI Reply"). The ubiquitous nature of the nation's existing copper plant stands in stark contrast to the currently limited reach of today's fiber facilities, which now extend to less than twenty percent of the nation's business locations.

Unfortunately, the deployment of EoC and other copper-based technologies is threatened by the policies and practices of incumbent local exchange carriers ("LECs"), who remain dominant in the provision of access to these last-mile copper facilities. To help ensure copper's broadband role and thereby ease demands for additional broadband spectrum, the FCC should ensure that all competitive providers, like XO, have a reasonable opportunity to gain efficient access to these copper facilities on an economic, non-discriminatory basis in areas where competing alternatives are not available.[8] As XO has previously urged, the FCC should also revisit its rules precluding carriers from obtaining access to unbundled network elements ("UNEs") for the exclusive provision of mobile wireless service and interexchange services.[9] Elimination of these outdated restrictions would enable competitive carriers to make wider use of existing copper plant, including for backhaul services, and could bring additional competitive pressure to bear on incumbent LEC special access offerings.

In addition, as XO and others have argued, the FCC should adopt new rules to prohibit incumbent LECs from unilaterally retiring existing copper infrastructure without an open process and opportunity for competitors to comment.[10] Currently, the FCC's regulations do little to prevent this incumbent LEC practice, which harms the public interest by preventing competitive providers from using the existing plant to offer broadband, video, high-speed data, and other advanced services to millions of consumers. To prevent incumbent LECs from squandering this critical resource, the Commission should complete its pending rulemaking on incumbent LEC copper retirement and

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[8] XO Broadband NOI Reply at 6-8.

[9] XO Broadband NOI Comments at 28-30.

[10] XO Broadband NOI Comments at 14-18; XO Broadband NOI Reply at 11-15.

overhaul this retirement process with new rules and procedures, including case-by-case review of all retirement requests.[11] The Commission should ensure that there is greater transparency regarding incumbent LEC copper retirement plans by requiring consultation between incumbents, the FCC, and all affected parties. This approach will facilitate competitors' intensive use of existing copper plant and help alleviate any gap between the demand for and supply of broadband spectrum.

4. What are the key issues in moving spectrum allocations toward their highest and best use in the public interest?[12]

e. What specific steps in overall spectrum management practices, if any, should we consider to ensure spectrum is fully utilized to maximize its total value?[13]

XO agrees with the Chairman's recent statement that "[w]e must promote more efficient use of spectrum."[14] XO urges the FCC to review its licensing procedures and make the changes necessary to ensure that those procedures encourage the full, efficient use of all commercially licensed spectrum. XO is concerned that substantial portions of spectrum are made available to the public in a manner that neither promotes such efficient spectrum use nor captures the value of this spectrum for the United States Treasury. Rather than assigning this spectrum through the competitive bidding process, the FCC in effect makes these frequencies available to interested parties at virtually no

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[11] *See, e.g.*, Petition for Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops, XO Communications, LLC; Covad Communications Group, Inc.; NuVox Communications; and Eschelon Telecom, Inc., RM-11358 (Jan. 18, 2007).

[12] *Public Notice* at 6.

[13] *Id.*

[14] *Genachowski Remarks* at 5.

cost on a first-come, first-served basis.[15] For example, the Commission should reexamine its previous conclusions about mutual exclusivity in some spectrum bands and determine whether changed circumstances would warrant the assignment of licenses through competitive bidding.[16] Examining such decade-old assumptions would certainly appear to be in the public interest, since auctions can enhance spectrum efficiency by "allowing the marketplace to determine the value of spectrum and by awarding licenses to those who value them most highly, thus ensuring that spectrum will be put to its highest value use."[17]

Alternatively, the FCC should consider applying spectrum usage fees to commercial licensees in these spectrum bands because "such market-based user fees are a desirable means for encouraging greater spectrum efficiency" and "the imposition of a market-based user fee would associate a direct economic cost with inefficient spectrum use."[18] By adopting competitive bidding or spectrum fees in these bands, the FCC would give licensees greater incentive to use their spectrum fully and efficiently, and would help capture the value of this spectrum for the American people.

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[15] *See, e.g.*, 47 C.F.R. § 101.701 (establishing licensing procedures for common carrier fixed point-to-point microwave service).

[16] *See, e.g., Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, ¶ 43 (1994).

[17] *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services*, Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 10076, ¶ 115 (1995).

[18] *Id.* ¶ 136.

II. CONCLUSION

XO urges the Commission to take the steps described above in order to reduce the demand for broadband spectrum and to promote the efficient use of spectrum.

Respectfully submitted,

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